

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: ACN COMMUNICATION SERVICES, INC.	DOCKET NOS. TCU-04-5 TF-04-52 WRU-04-8-3384
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**ORDER GRANTING APPLICATION, APPROVING CONCURRENCE IN MAPS,
GRANTING WAIVER, APPROVING TARIFF, AND ISSUING CERTIFICATE**

(Issued May 12, 2004)

On February 19, 2004, ACN Communication Services, Inc. (ACN), filed an application with the Utilities Board (Board) for issuance of a certificate of public convenience and necessity pursuant to Iowa Code § 476.29 (2003), stating its intention to provide local exchange service in the exchanges currently served by Qwest Corporation (Qwest). The application has been identified as Docket No. TCU-04-5. ACN has provided financial statements and the qualifications of its company officers and has stated it will support a 2-PIC dialing methodology for dialing parity. No objections to the application were received.

Also on February 19, 2004, ACN filed a proposed local exchange tariff with the Board providing the terms, conditions, and rates for local exchange service in listed exchanges as described in the exchange maps and boundaries of Qwest. Revisions to the proposed tariff were filed on May 5, 2004. The proposed tariff and its revisions have been identified as Docket No. TF-04-52.

Iowa Code § 476.29(2) provides that a local exchange carrier shall not be denied a certificate if the Board finds that the applicant "possesses the technical, financial, and managerial ability to provide the service it proposes to render and the Board finds the service is consistent with the public interest."

The Board has reviewed ACN's application and finds the necessary technical, financial, and managerial ability to provide local exchange service has been demonstrated. The Board finds that it is in the public interest to approve the application.

ACN also states that its service area will mirror the service territories of exchanges and service area maps of Qwest as they are currently filed and may be modified in the future. Iowa Code § 476.29(4) requires that each certificate define the service territory in which land-line local telephone service will be provided and authorizes the Board to promulgate rules establishing the requirements for filing maps showing the service territory. Subrule 199 IAC 22.20(3) requires that all utilities have maps on file with the Board that show exchange boundaries. The Board finds that ACN has complied with the statutory and rule requirements by concurring in the exchange maps of Qwest.

ACN requests the Board waive the requirements of 199 IAC 16.5(2), 18.2, and 22.3(1). The waiver request has been identified as Docket No. WRU-04-8-3384.

ACN requests a waiver of 199 IAC 16.5(2), which requires the keeping of records according to the uniform system of accounts. ACN states it will maintain its

books in accordance with generally accepted accounting principles (GAAP). The Board finds this waiver should be granted, since records kept in accordance with GAAP accounting are acceptable for a competitive local exchange service provider.

ACN also requested the requirements of 199 IAC 18.2 be waived. The rule requires that a regulated public utility keep its records in Iowa. The Board will grant the waiver based on ACN's statement that it will make the records available to the Board upon request.

ACN also requested a waiver of 199 IAC 22.3(1), requiring it to independently publish a directory. The Board will grant this waiver based upon ACN's statement that it will arrange for its customers to be included in the directories published in the areas it provides local exchange service.

Rule 199 IAC 1.3 states that the Board may grant waivers if it finds, based upon clear and convincing evidence, that the application of the rule would pose an undue hardship, the waiver would not prejudice the substantial legal rights of any person, the provisions waived are not specifically mandated by statute, and substantially equal protection of public health, safety, and welfare will be afforded after the waiver. The Board has considered the waiver requests as described above and finds that the waiver meets the four criteria of the rule and the evidence in support of the waiver is clear and convincing.

Adherence to these rules would be an undue hardship on a competitive telecommunications company just beginning to do business in Iowa. It would be an

undue hardship on ACN because other competitive carriers have been granted similar waiver requests. The Board finds there are no substantial legal rights of any person that are affected by these waivers and there is no statute that specifically mandates the actions waived. Additionally, the Board finds that there will be substantially equal protection for the public health, safety, and welfare provided since the actions waived will be completed under different circumstances.

The Board has reviewed the proposed tariff filed on February 19, 2004, and the revisions filed on May 5, 2004, and finds that the revised tariff substantially complies with Board rules for the filing and processing of tariff pages. The tariff contains rates for both business and residential customers. Notice was provided to all affected carriers. The Board will approve the tariff effective the date of this order and issue ACN a certificate of public convenience and necessity concurrent with this order.

IT IS THEREFORE ORDERED:

1. The application for a certificate of public convenience and necessity filed by ACN Communication Services, Inc., on February 19, 2004, is granted.
2. The concurrence in the maps and boundaries of the exchanges of Qwest Corporation is approved.
3. The waiver of 199 IAC 16.5(2), 18.2, and 22.3(1), identified as Docket No. WRU-04-8-3384, is granted as described in this order.

4. The tariff filed by ACN Communication Services, Inc., on February 19, 2004, and its revisions filed on May 5, 2004, identified as Docket No. TF-04-52, are approved effective the date of this order.

5. A certificate, identified as Certificate No. 0282, is being issued to ACN Communication Services, Inc., concurrently with this order.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 12th day of May, 2004.